

CLAIMS: THE PIOUS FUND

Protocol signed at Washington May 22, 1902

Entered into force May 22, 1902

Award handed down by the Permanent Court of Arbitration October 14, 1902

Agreement for final settlement, payment and discharge concluded August 1, 1967¹

32 Stat. 1916; Treaty Series 408

PROTOCOL OF AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF MEXICO FOR THE ADJUSTMENT OF CERTAIN CONTENTIONS ARISING UNDER WHAT IS KNOWN AS "THE PIOUS FUND OF THE CALIFORNIAS"

Whereas, under and by virtue of the provisions of a convention entered into between the High Contracting Parties above named, of date July 4, 1868,² and subsequent conventions supplementary thereto, there was submitted to the Mixed Commission provided for by said Convention, a certain claim advanced by and on behalf of the prelates of the Roman Catholic Church of California against the Republic of Mexico for an annual interest upon a certain fund known as "The Pious Fund of the Californias," which interest was said to have accrued between February 2, 1848, the date of the signature of the Treaty of Guadalupe Hidalgo,³ and February 1, 1869, the date of the exchange of the ratifications of said Convention above referred to; and

Whereas, said Mixed Commission, after considering said claim, the same being designated as No. 493 upon its docket, and entitled Thaddeus Amat, Roman Catholic Bishop of Monterey, a corporation sole, and Joseph S. Alemany, Roman Catholic Bishop of San Francisco, a corporation sole, against The Republic of Mexico, adjudged the same adversely to the Republic of Mexico and in favor of said claimants, and made an award thereon of Nine Hundred and Four Thousand, Seven Hundred and 99/100 (904,700.99) Dollars; the same, as expressed in the findings of said Court, being for twenty-one years' interest of the annual amount of Forty-three Thousand and Eighty and 99/100 (43,080.99) Dollars upon Seven Hundred and Eighteen Thousand and Sixteen and 50/100 (718,016.50) Dollars, said award being in

¹ 18 UST 3266; TIAS 6420.

² TS 212, *ante*, p. 826.

³ TS 207, *ante*, p. 791.

Mexican gold dollars, and the said amount of Nine Hundred and Four Thousand, Seven Hundred and 99/100 (904,700.99) Dollars having been fully paid and discharged in accordance with the terms of said convention; and

Whereas, the United States of America on behalf of said Roman' Catholic Bishops, above named, and their successors in title and interest, have since such award claimed from Mexico further instalments of said interest, and have insisted that the said claim was conclusively established, and its amount fixed as against Mexico and in favor of said original claimants and their successors in title and interest under the said first mentioned convention of 1868 by force of the said award as *res judicata*; and have further contended that apart from such former award their claim against Mexico was just, both of which propositions are controverted and denied by the Republic of Mexico, and the High Contracting Parties hereto, animated by a strong desire that the dispute so arising may be amicably, satisfactorily and justly settled, have agreed to submit said controversy to the determination of Arbitrators, who shall, unless otherwise herein expressed, be controlled by the provisions of the International Convention for the pacific settlement of international disputes, commonly known as The Hague Convention,⁴ and which arbitration shall have power to determine:

1. If said claim, as a consequence of the former decision, is within the governing principle of *res judicata*; and

2. If not, whether the same be just.

And to render such judgment or award as may be meet and proper under all the circumstances of the case:

It is therefore agreed by and between the United States of America, through their representative, John Hay, Secretary of State of the United States of America, and the Republic of Mexico, through its representative, Manuel de Azpiroz, Ambassador Extraordinary and Plenipotentiary to the United States of America for the Republic of Mexico as follows:

I

That the said contentions be referred to the special tribunal hereinafter provided, for examination, determination and award.

II

The special tribunal hereby constituted shall consist of four arbitrators, (two to be named by each of the High Contracting Parties) and an umpire to be selected in accordance with the provisions of the Hague Convention. The arbitrators to be named hereunder shall be signified by each of the

⁴ TS 536, *ante*, vol. 1, p. 577.

High Contracting Parties to the other within sixty days after the date of this protocol. None of those so named shall be a native or citizen of the parties hereto. Judgment may be rendered by a majority of said court.

All vacancies occurring among the members of said court because of death, retirement or disability from any cause before a decision shall be reached, shall be filled in accordance with the method of appointment of the member affected as provided by said Hague Convention, and if occurring after said court shall have first assembled, will authorize in the judgment of the court an extension of time for hearing or judgment, as the case may be, not exceeding thirty days.

III

All pleadings, testimony, proofs, arguments of counsel and findings or awards of commissioners or umpire, filed before or arrived at by the Mixed Commission above referred to, are to be placed in evidence before the Court hereinbefore provided for, together with all correspondence between the two countries relating to the subject matter involved in this arbitration; originals or copies thereof duly certified by the Departments of State of the High Contracting Parties being presented to said new tribunal. Where printed books are referred to in evidence by either party, the party offering the same shall specify volume, edition and page of the portion desired to be read, and shall furnish the Court in print the extracts relied upon; their accuracy being attested by affidavit. If the original work is not already on file as a portion of the record of the former Mixed Commission, the book itself shall be placed at the disposal of the opposite party in the respective offices of the Secretary of State or of the Mexican Ambassador in Washington, as the case may be, thirty days before the meeting of the tribunal herein provided for.

IV

Either party may demand from the other the discovery of any fact or of any document deemed to be or to contain material evidence for the party asking it; the document desired to be described with sufficient accuracy for identification, and the demanded discovery shall be made by delivering a statement of the fact or by depositing a copy of such document (certified by its lawful custodian, if it be a public document, and verified as such by the possessor, if a private one), and the opposite party shall be given the opportunity to examine the original in the City of Washington at the Department of State, or at the office of the Mexican Ambassador, as the case may be. If notice of the desired discovery be given too late to be answered ten days before the tribunal herein provided for shall sit for hearing, then the answer desired thereto shall be filed with or documents produced before the court herein provided for as speedily as possible.

V

Any oral testimony additional to that in the record of the former arbitration may be taken by either party before any Judge, or Clerk of Court of Record, or any Notary Public, in the manner and with the precautions and conditions prescribed for that purpose in the rules of the Joint Commission of the United States of America, and the Republic of Mexico, as ordered and adopted by that tribunal August 10, 1869, and so far as the same may be applicable. The testimony when reduced to writing, signed by the witness, and authenticated by the officer before whom the same is taken, shall be sealed up, addressed to the court constituted hereby, and deposited so sealed up in the Department of State of the United States, or in the Department of Foreign Relations of Mexico to be delivered to the Court herein provided for when the same shall convene.

VI

Within sixty days from the date hereof the United States of America, through their agent or counsel, shall prepare and furnish to the Department of State aforesaid, a memorial in print of the origin and amount of their claim, accompanied by references to printed books, and to such portions of the proofs or parts of the record of the former arbitration, as they rely on in support of their claim, delivering copies of the same to the Embassy of the Republic of Mexico in Washington, for the use of the agent or counsel of Mexico.

VII

Within forty days after the delivery thereof to the Mexican Embassy the agent or counsel for the Republic of Mexico shall deliver to the Department of State of the United States of America in the same manner and with like references a statement of its allegations and grounds of opposition to said claim.

VIII

The provisions of paragraphs VI and VII shall not operate to prevent the agents or counsel for the parties hereto from relying at the hearing or submission upon any documentary or other evidence which may have become open to their investigation and examination at a period subsequent to the times provided for service of memorial and answer.

IX

The first meeting of the arbitral court hereinbefore provided for shall take place for the selection of an umpire on September 1, 1902, at the Hague in the quarters which may be provided for such purpose by the International Bureau at the Hague, constituted by virtue of the Hague convention hereinbefore

referred to, and for the commencement of its hearings September 15, 1902, is designated, or, if an umpire may not be selected by said date, then as soon as possible thereafter, and not later than October 15, 1902, at which time and place and at such other times as the court may set (and at Brussels if the court should determine not to sit at the Hague) explanations and arguments shall be heard or presented as the court may determine, and the cause be submitted. The submission of all arguments, statements of facts, and documents shall be concluded within thirty days after the time provided for the meeting of the court for hearing (unless the court shall order an extension of not to exceed thirty days) and its decision and award announced within thirty days after such conclusion, and certified copies thereof delivered to the agents or counsel of the respective parties and forwarded to the Secretary of State of the United States and the Mexican Ambassador at Washington, as well as filed with the Netherland Minister for Foreign Affairs.

X

Should the decision and award of the tribunal be against the Republic of Mexico, the findings shall state the amount and in what currency the same shall be payable, and shall be for such amount as under the contentions and evidence may be just. Such final award, if any, shall be paid to the Secretary of State of the United States of America within eight months from the date of its making.

XI

The agents and counsel for the respective parties may stipulate for the admission of any facts, and such stipulation, duly signed, shall be accepted as proof thereof.

XII

Each of the parties hereto shall pay its own expenses, and one-half of the expenses of the arbitration, including the pay of the arbitrators; but such costs shall not constitute any part of the judgment.

XIII

Revision shall be permitted as provided in Article LV of The Hague Convention, demand for revision being made within eight days after announcement of the award. Proofs upon such demand shall be submitted within ten days after revision be allowed (revision only being granted, if at all, within five days after demand therefor) and counterproofs within the following ten days, unless further time be granted by the Court. Arguments shall be submitted within ten days after the presentation of all proofs, and a judgment or award given within ten days thereafter. All provisions applicable to the original judgment or award shall apply as far as possible to

the judgment or award on revision. *Provided* that all proceedings on revision shall be in the French language.

XIV

The award ultimately given hereunder shall be final and conclusive as to the matters presented for consideration.

Done in duplicate in English and Spanish at Washington, this 22d day of May, A. D. 1902.

JOHN HAY [SEAL]

M. DE AZPÍROZ [SEAL]